

BACKGROUND PAPER FOR HEARING

CEMETERY AND FUNERAL BUREAU

IDENTIFIED ISSUES, QUESTIONS FOR THE BUREAU, AND BACKGROUND CONCERNING ISSUES

In 1993, the Cemetery Board and the Board of Funeral Directors and Embalmers (collectively “the Boards”) came under close scrutiny from the State Legislature. At that time, these semi-autonomous licensing boards separately regulated California’s cemetery and funeral industries under the general umbrella of the Department of Consumer Affairs (Department). That fall, the Senate Committee on Business and Professions, Subcommittee on Efficiency and Effectiveness in State Boards and Commissions (Subcommittee), convened hearings in which these two separate boards, along with other licensing boards within the Department, were reviewed with a view toward improving the efficiency of regulatory boards, eliminating duplicative or overlapping licensing functions and, if need be, eliminate regulatory agencies which no longer serve the public’s need.

In its final report, the Subcommittee recommended that licensure for the cemetery and funeral industry be transferred to a Bureau under the director of the Department.

The following year, reform legislation was introduced which proposed to eliminate the two Boards and transfer their functions to a bureau under the direct authority of the Department. That bill was lobbied heavily by both industries as well as members of the two Boards, and failed as a result.

In 1995, agreement was reached with industry members on legislation to merge the two Boards into a single Board. However, that legislation was derailed by the discovery in Southern California of what appeared to be serious crimes committed at various cemeteries under the Cemetery Board’s jurisdiction. The alleged crimes, which included fraud, embezzlement of endowment care trust funds, the mishandling of human remains and the recycling of grave sites, brought crisis to the state’s cemetery industry and overwhelmed the Board. Urgency legislation transferred the regulatory operations of both Boards to the Department as of January 1, 1996.

In January 2000, the licensing operations for both Programs, which had been administered by the Division of Licensing, were transitioned to the Bureau. In 2000, the Department sponsored legislation that recast the Cemetery Program and Funeral Program into the Cemetery and Funeral Bureau (Bureau).

The Bureau has statutory authority to enforce the licensing and practice acts in the Business and Professions Code relating to the funeral, cemetery and crematory industries. The Bureau also has jurisdiction over specified sections of the Health and Safety Code dealing with human remains, cemetery and cremation provisions.

The Bureau had approximately 9,035 active licensees in FY 2000/01 in nine licensing categories. The Bureau regulates nearly every aspect of the licensed cemetery and funeral industries. The Bureau has responsibility for overseeing both the fiduciary and the operational activities of the industries. On the financial side, the Bureau oversees funeral preneed trust funds, cemetery endowment care trust

funds and special care trust funds. The State Department of Insurance regulates the sale of insurance policies, which are at times used to fund preneed funeral contracts. However, the seller must meet the price disclosure and contract requirements under the Bureau's jurisdiction. The Bureau also does not regulate religious, public, city, district, and historic cemeteries.

On the operational side, the Bureau licenses and regulates cemeteries, funeral establishments, cremated remains disposers, cemetery brokers, cemetery salespersons, funeral directors, embalmers, and apprentice embalmers. The Bureau also separately licenses crematories. However until January 1, 2002, the law provides that a cemetery may operate a crematory under its certificate of authority without separate licensing. There are some 77 separately licensed crematories and approximately 100 more operate under a certificate of authority. Legislation sponsored by the Department was enacted to require, among other things, that all crematories must be separately licensed. Ultimately, this will allow the Bureau to improve consumer protection by better monitoring the operations of crematories in the state.

On December 3, 2001, the Bureau submitted a draft sunset report to the Joint Legislative Sunset Review Committee (Joint Committee). This is the first time that the Bureau has been reviewed by the Joint Committee. The following are areas of concern for the Joint Committee, along with background information concerning the particular issue. There are questions that staff has asked concerning the particular issue. The Bureau was provided with these issues and questions and is prepared to address each one if necessary.

CURRENT SUNSET REVIEW ISSUES

BUREAU POWERS AND DUTIES ISSUES

ISSUE #1: It is unclear whether the Bureau has explicit authority to conduct regular inspections of licensed cemeteries.

Question #1 for the Bureau: *Does the Bureau have explicit authority to conduct regular inspections of licensed cemeteries? If so, are these unannounced visits? What exactly does the Bureau inspect? If not, would consumers benefit if the Bureau were granted clear authority for inspections? Would the Bureau have sufficient staff and funds to perform these inspections?*

Background: The Bureau conducts inspections of nearly half of California's 941 funeral establishments each year. The Bureau conducts unannounced inspections of funeral establishments as well as initial licensure and change of location inspections. The law requires an annual unannounced inspection of each of the 77 licensed crematories.

The discovery in recent years of mismanagement and violations of the law at cemeteries operated under licenses issued by the Bureau emphasizes a need for ongoing inspections of cemeteries. Current law provides general authority for the Bureau to inspect the operations of licensed cemeteries. However, the law does not explicitly authorize the Bureau to have full access to cemetery operations to conduct physical inspections. The law also does not contain any requirement for the Bureau to conduct periodic inspections of cemeteries.

Current law requires the Bureau to examine books and records relating to cemetery trust funds and reports. It also requires the Bureau to inspect books, records, and premises of each licensed crematory. However, the law does not provide the same clear inspection authority for cemeteries.

ISSUE #2: The Bureau is required to examine endowment care funds and endowment care reports. It is unclear whether the Bureau complies with this requirement.

Question #2 for the Bureau: *Does the Bureau comply with this requirement?*

Background: Section 9651 of the Business and Professions Code requires the Bureau to examine the reports filed with it as to their compliance with the requirements of the Health and Safety Code as to the amount of endowment care funds collected and as to the manner of investment of such funds. Section 9652 of the Business and Professions Code generally requires the Bureau to examine the endowment care funds of a cemetery authority under certain specified circumstance but at least once every five years.

ISSUE #3: The Bureau is required to provide registered cremated remains disposers a booklet that includes details about their registration, renewal and statutory requirements. The Bureau has not complied with this requirement.

Question #3 for the Bureau: *Why hasn't the Bureau complied with this requirement?*

Background: Section 9741.1 of the Business and Professions Code provides that the Bureau shall prepare and deliver to each registered cremated remains disposer a booklet that includes, but is not limited to, the following information: details about the registration and renewal requirements for cremated remains disposers; requirements for obtaining state permits to dispose of cremated human remains; state storage requirements, if any; statutory duties pursuant to this article, and other applicable state laws.

BUDGETARY ISSUE

ISSUE #4: The main source of revenue (an \$8.50 cremation and interment fee) for the Bureau's Cemetery Fund will be eliminated as of April 1, 2003.

Question #4 for the Bureau: *What will be the impact to the Bureau if their main source of income is eliminated? How will this impact the Bureau's licensing and enforcement activities? How will this impact consumers and licensees?*

Background: Revenues collected by the Bureau are deposited into one of two funds that provide funding for Bureau operations. Cemetery and crematory related revenues are deposited into the Cemetery Fund, and the funeral related revenues are deposited into the State Funeral Directors and Embalmers Fund (Funeral Fund).

The cremation and interment fee paid by cemeteries and crematories is the main source of revenue for the Cemetery Fund. In 1996, AB 2234 (Willard Murray) raised the burial and cremation fees provided in Sections 9765 and 9786 of the Business and Professions Code from \$ 0.50 to \$8.50 per interment or cremation. The fees were raised in order provide increased funding for the mandated oversight of the

cemetery industry by the Department and to generate revenue to fund the enhanced enforcement of the Cemetery Act in response to the crisis in the cemetery industry discovered in 1995.

Licensed cemeteries and crematories are required to pay, on a quarterly basis, \$8.50 for each burial, entombment, inurnment or cremation which they conduct. Last fiscal year (FY 2000/01), the Bureau collected \$1.5 million in quarterly fees. This amount made up approximately 75% of the total revenue collected. The \$8.50 quarterly fee is currently set in statute (Sections 9765 and 9786 of the Business and Professions Code) and is due to expire in April 2003. This will cause the Cemetery Fund revenues to decline significantly from \$1.9 million in FY 2001/02 to \$1.5 million in FY 2002/03. The impact of the fee loss on revenues will not be fully seen until FY 2003/04 when revenues will drop to \$501,000 – well below projected expenditures.

LICENSURE ISSUES

ISSUE #5: It is unclear whether the entry-level requirements for embalmers are adequate, inadequate or duplicative.

Question #5 for the Bureau: *Does the Bureau feel that the existing entry-level requirements for licensure as an embalmer are sufficient or are they duplicative? What quality control measures has the Bureau implemented in order to ensure actual and meaningful compliance with the two-year apprenticeship requirement for embalmers?*

Background: Among other things, Section 7643 of the Business and Professions Code provides that, in order to qualify for a license as an embalmer, the applicant shall have completed at least two years of apprenticeship under an embalmer licensed and engaged in practice as an embalmer in this state in a funeral establishment, which shall have been approved for apprentices by the Bureau and while so apprenticed shall have assisted in embalming not fewer than 100 human remains. This two year apprenticeship requirement is in addition to the requirement to complete a course of instruction of not less than one academic year in an embalming school, approved by the Bureau and accredited by the American Board of Funeral Service Education.

Section 7665(a) of the Business and Professions Code generally requires apprentice embalmers to file a report of apprenticeship upon completion of apprenticeship. Section 7665(b) states that the information contained in the report shall consist of a concise summary of the work done by the apprentice during the period covered thereby and shall be verified by the apprentice and certified to as correct by his or her supervising embalmer and employer. Upon request of the Bureau, each funeral director in whose establishment an apprenticeship is being or has been, served, and each embalmer under whose instruction or supervision an apprenticeship is being, or has been, served, shall promptly file with the Bureau a report or such other information as may be requested relating to the apprenticeship.

It is unclear whether the course of instruction is duplicative of the two-year apprenticeship. It is unclear whether the Bureau has set specific standards for the apprenticeship. It is unclear whether the Bureau conducts audits or inspections to ensure actual compliance with the apprenticeship requirements.

ISSUE #6: Although the Bureau administers an examination for crematory managers and cemetery managers the Bureau can neither charge a fee for the development and administration of the examination nor do they license or regulate these individuals.

Question #6 for the Bureau: *Does the Bureau feel that minimal competencies to perform as a cemetery manager and crematory manager are necessary for consumer protection? Does the Bureau feel that the current examination adequately checks the competency level of these individuals? What is the actual cost to the Bureau to develop and administer the examination? Does the Bureau feel that the experience requirement for cemetery managers is necessary for consumer protection? Does the Bureau feel that there should be an experience requirement for crematory managers like there is for cemetery managers?*

Background: Section 9787 of the Business and Professions Code provides that each crematory, for which a crematory license is required, shall be operated under the supervision of a manager qualified as such in accordance with rules adopted by the Bureau. Each manager shall be required to successfully pass a written examination evidencing an understanding of the applicable provisions of this code and of the Health and Safety Code of this state.

Title 16, California Code of Regulations, Section 2326.1(a), states that each cemetery for which a new certificate of authority is required shall be operated under the supervision of a managing officer qualified as such by the board. Title 16, California Code of Regulations, Section 2326.1(a) (1), states that the applicant for a new certificate of authority, in addition to the requirements of Section 2326, will designate the managing officer. There shall be submitted with the application the written statement of such officer demonstrating that he has two years' experience in the cemetery business, or equivalent experience, which experience shall be commensurate with the size, type, and scope of the proposed activities of the cemetery authority.

According to the Bureau's report to the Joint Committee, during FY 1999/00, the Bureau had 158 candidates for the crematory manager examination with 46 no shows. During FY 2000/01, the Bureau had 104 candidates for the crematory manager examination with 34 no shows.

According to the Bureau's report to the Joint Committee, during FY 1999/00, the Bureau had 71 candidates for the cemetery manager examination with 26 no shows. During FY 2000/01, the Bureau had 57 candidates for the cemetery manager examination with 24 no shows.

According to the Bureau's report to the Joint Committee, in order to administer these examinations, revenues must be redirected from other Cemetery Fund resources. Redirecting resources from licensing or enforcement operations can result in delays in processing licensing applications, diminished enforcement operations and weakened consumer protection. Furthermore, it is significant to note that nearly one third of those candidates scheduled for these two examinations do not show up. This intensifies the loss to the Bureau because scheduling and examination preparation must still be completed for candidates who do not appear to take the examination. SB 723 (Figueroa), currently before the Legislature, would provide fee authority for the actual cost to the Bureau to develop, purchase, grade and administer the examinations.

No certificate or license is issued upon successfully passing the cemetery manager or crematory manager examination.

According to the Bureau's report to the Joint Committee, the Bureau is currently working with the Office of Examination Resources (OER) to evaluate moving the Bureau's examinations to a computer-based format. Under this format, the Bureau would qualify applicants to sit for the examination, which applicants could take at any of a number of test sites throughout the state. Since the Bureau's crematory manager and cemetery manager examinations have no fee authority, the Bureau would be unable to offer those examinations in a computer-based format.

ISSUE #7: Only applicants for the funeral director and embalmer examinations are required to submit fingerprint cards for background investigations. It is unclear why the Bureau doesn't interpret the law to require all Bureau applicants to submit fingerprint cards for background investigations.

Question #7 for the Bureau: *How does the Bureau interpret the law relative to the submission of fingerprint cards for background investigations?*

Background: Section 144(a) of the Business and Professions Code provides that notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation. Section 144(b) of the Business and Professions Code provides that Section 144(a) applies to the Cemetery and Funeral Programs.

In 2000, the Department sponsored legislation (AB 2888) that recast the Cemetery Program and Funeral Program into the Cemetery and Funeral Bureau. This measure modified numerous sections of the Business and Professions Code but did not "update" Section 144.

ISSUE #8: Applicants for a Certificate of Authority for the operation of a cemetery must post a \$50,000 fidelity bond with the Bureau. Neither crematories nor funeral establishments have a similar requirement.

Question #8 for the Bureau: *Can the Bureau explain the purpose of the fidelity bond requirement? Should the bond requirement be retained? Should the bond amount be increased? Should the bond requirement be extended to funeral establishments and crematories?*

Background: Section 8734 of the Health and Safety Code generally provides that applicants for a Certificate of Authority for operation of a cemetery, must provide the Bureau with evidence that a \$50,000 fidelity bond on officers and employees has been posted. The purpose of the bond is to guarantee payment of any monetary loss incurred by the endowment care or special care funds of the cemetery authority, occasioned by any acts of fraud or dishonesty by the board of trustees or corporate trustee thereof. An endowment care fund includes money collected from cemetery property purchasers and placed in trust for the maintenance and upkeep of the cemetery.

EXAMINATION ISSUES

ISSUE #9: It is unclear whether the Bureau is complying with the recommended five to seven year timeframe for performing an occupational analysis and examination validation for their cemetery examinations.

Question #9 for the Bureau: *Is the Bureau complying with the recommended five to seven year timeframe? When is the last time the Bureau performed an occupational analysis of their cemetery broker examination, cemetery manager examination and crematory examination?*

Background: According to the Bureau's report to the Joint Committee, the Department's Office of Examination Resources (OER) has developed new examinations annually since 1997. Meetings with subject matter experts were held in 1997 to develop test plans for these programs shortly after DCA assumed responsibility for the exams from the former Cemetery Board and Board of Funeral Directors and Embalmers. With a few minor changes, the test plans are still in use. Only the embalmer examination tests detailed knowledge of a trade as well as knowledge of related laws and regulations. The other examinations test knowledge of laws and regulations.

The Funeral Fund BCP in FY 2000/01, provided funding for the Bureau to conduct an occupational analysis of embalming and funeral directing over a two-year period, and for ongoing examination resources. The Bureau has contracted with OER to conduct both studies. The occupational analysis of the practice of embalming in California was begun by OER in FY 2000/01; and the occupational analysis of the funeral director practice is being conducted in the current fiscal year (FY 2001/02). The OER cost to the Bureau is \$56,000 for each occupational analysis.

While the Bureau's report specifically addresses the embalmer examination and the funeral director examination, there is no specific mention of the examinations for the cemetery licensees.

ISSUE #10: It is unclear whether the funeral director's examination includes questions about trusts, fiduciary duties, contracts or investments.

Question #10 for the Bureau: *Does the funeral director's examination include questions about trusts, fiduciary duties, contracts or investments? Does the Bureau feel that this examination adequately checks the competency of the applicant?*

Background: Section 7685 of the Business and Professions Code provides that before an individual is granted a funeral director's license, he or she shall successfully pass an examination upon the following subjects: (a) the signs of death; (b) the manner by which death may be determined; (c) the laws governing the preparation, burial and disposal of human remains, and the shipment of bodies dying from infectious or contagious diseases; and (d) local health and sanitary ordinances and regulations relating to funeral directing and embalming.

In comparison, Section 9702.5 of the Business and Professions Code generally provides that the Bureau shall ascertain by written examination that the applicant for a cemetery broker's license has a fair understanding of: (1) cemetery associations, cemetery corporations and duties of directors; (2) plot ownership, deeds, certificates of ownership, contracts of sale, liens and leases; (3) establishing,

dedicating, maintaining, managing, operating, improving and conducting a cemetery; (4) the care, preservation and embellishment of cemetery property; (5) the care and preservation of endowment care funds, trust funds, and the investment thereof; and (6) the obligations between principal and agent, of the principles of cemetery brokerage practice and the business ethics pertaining thereto, as well as of the provisions of this act relating to cemetery brokerage.

PROFESSIONAL CONDUCT ISSUE

ISSUE #11: The top two categories of complaints received by the Bureau are allegations of contractual violations and unprofessional conduct. Complaints concerning contracts involve both preneed and at-need funeral or cemetery services, and most often involve violations of trust fund requirements for preplanned arrangements.

Question #11 for the Bureau: *Does the Bureau have any suggestions about how to curb these types of complaints in the future? Does the Bureau feel that the existing fine structure acts as a sufficient deterrent?*

Background: According to the Bureau's report to the Joint Committee, the largest number of complaints involves allegations of contractual violations, followed by allegations of unprofessional conduct. Complaints concerning contracts involve both preneed and at-need funeral or cemetery services, and most often involve violations of trust fund requirements for pre-planned arrangements. Common complaints are that the decedent told their family members that all costs for the funeral and burial had been paid, and additional costs are incurred at time of death that were not included in the contract. Additional allegations involve consumers being charged more than provided for in the contract.

ENFORCEMENT ISSUES

ISSUE #12: Consumers purchase insurance policies in conjunction with preneed contracts. It is unclear whether insurance agents are improperly engaging in unlicensed funeral activities or whether they are subject to and comply with the preneed disclosure and trusting laws.

Question #12 for the Bureau: *Does the Bureau think insurance agents are subject to the preneed disclosure and trusting laws? If the Bureau thinks insurance agents are subject to the preneed disclosure and trusting laws, how do they ensure compliance? Would it be effective for the Bureau to work with the Department of Insurance to ensure that funeral employees are not selling insurance policies without a license and that insurance agents are not selling funeral products without a license?*

Background: The Bureau regulates nearly every aspect of the licensed cemetery and funeral industries. The Bureau has responsibility for overseeing both the fiduciary and the operational activities of the industries. On the financial side, the Bureau oversees funeral preneed trust funds, cemetery endowment care trust funds and special care trust funds.

The State Department of Insurance regulates the sale of insurance policies, which are at times used to fund preneed funeral contracts. According to the Bureau's report to the Joint Committee, the seller

must meet the price disclosure and contract requirements under the Bureau's jurisdiction. However, it is unclear whether the Bureau ensures that the sellers of these products comply with the price disclosure and contract requirements.

ISSUE #13: The law requires the Bureau to annually inspect the operations of 5 to 10 percent of the registered cremated remains disposers. It is unclear whether the Bureau complies with this requirement.

Question #13 for the Bureau: *Does the Bureau conduct random inspections of their registered cremated remains disposers? If so, what is the extent and frequency?*

Background: Section 9745.5(b) of the Business and Professions Code generally provides that the Bureau shall conduct, on an annual basis, random inspections of the operations of 5 to 10 percent of the registered cremated remains disposers, and is authorized to inspect any place used by a cremated remains disposer for the storage of cremated remains without notice to the cremated remains disposer. The Bureau's report to the Joint Committee indicates that there are currently 218 registered cremated remains disposers.

It is unclear, from either the Bureau's report to the Joint Committee or the Bureau's website, whether the Bureau utilizes its audit authority.

ISSUE #14: The Bureau has the authority to assess a late fee on every licensee except cemeteries and crematories.

Question #14 for the Bureau: *Does the Bureau feel that licensees purposefully fail to renew because it is a cheaper alternative? What problems does the failure of timely renewal cause for the Bureau?*

Background: Section 9747 of the Business and Professions Code provides that licenses under the Cemetery Act are subject to the renewal fee plus a delinquent fee of 50% (the total delinquent renewal fee would be 150% of the normal renewal fee). However, the law places a cap of \$25 on the delinquent fee. The delinquent fee cap is inconsistent with the licenses under the Funeral Act and with other regulatory programs under the Department that have authority to charge 150% of the renewal fee.

ISSUE #15: Some members of the cemetery and funeral industry have expressed concerns about what they perceive as inconsistent interpretations by the Bureau's field representatives.

Question #15 for the Bureau: *Does the Bureau have a training program for their field representatives? Does the Bureau have a standard protocol field representatives follow when they inspect an establishment or respond to a complaint?*

ISSUE #16: The Joint Committee has been informed of the practice of convalescent homes and hospitals providing the family of the deceased with information on a local funeral establishment or automatically transporting the deceased to a local funeral establishment.

Question #16 for the Bureau: *Is the Bureau familiar with this practice? Is this type of practice prohibited? If no, should it be prohibited? Should it only be prohibited if the hospital or convalescent home receives some form of kickback?*

UNLICENSED SEGMENTS OF THE INDUSTRY ISSUES

ISSUE #17: The relationship between the licensed and unlicensed segments of the funeral and cemetery industry has been a long and contentious one.

Question #17 for the Bureau: *Is the Bureau aware of whether there is a problem with funeral establishments purposefully damaging caskets they receive for their customers from third party retailers? Is the Bureau aware of whether funeral establishments or cemeteries are discriminating against consumers because they purchased a casket, vault or marker from a third party retailer? Is the Bureau aware of whether defamatory comments about the quality of the products provided by third party retailers are being made? Should funeral establishments be required to sign delivery tickets when a casket is delivered by a third party retailer? Is the Bureau aware of whether funeral establishments are requiring consumers to be present at the establishment when their casket is delivered from a third party retailer? Is the Bureau aware of whether funeral establishments are refusing to transport a consumers' casket when purchased from a third party retailer? Should funeral establishments be required to provide a clear disclosure to consumers specifying that there is no penalty/fee assessed to them if they purchase items (caskets, flowers, etc.) from an outside source (handling fee)? Should cemeteries be required to provide a clear disclosure to consumers specifying that there is no penalty/fee assessed to them if they purchase items (markers, monuments, etc.) from an outside source (handling fee)? What does the Bureau do to prevent and punish unlicensed behavior and the unprofessional conduct of licensees?*

ISSUE #18: Retail casket stores, and occasionally others, currently sell merchandise that, if sold by a licensed funeral director, would be subject to preneed sales requirements relating to certain contract, fiduciary and reporting practices.

Question #18 for the Bureau: *Does the Bureau have any jurisdiction over casket retailers? Does the Bureau believe that casket retailers should be subject to trust requirements for preneed burial container arrangements?*

Background: In recent years, more attention has been focused on retail casket sales by industry associations, and by corporate and independent owners of funeral establishments and cemeteries. The California Funeral Directors Association (CFDA) sponsored legislation in 1997 to place contract, disclosure and trust fund requirements on casket retailers (SB 816). SB 816 was an effort to "level the playing field" between "discount" casket sellers and traditional funeral home caskets sellers. The bill also was intended to protect consumers by applying existing consumer protection provisions to all casket sales. Governor Wilson ultimately vetoed SB 816.

In 1998, the Legislature enacted AB 1709 (Alquist, Chapter 286, Statutes of 1998) which placed contract and disclosure requirements upon third party sellers in the general advertising provisions of the Business and Professions Code. In 1999, legislation was sponsored by the CFDA (AB 1462) to require casket retailers who sell goods on a preneed basis to place the money into trust until time of need. The purpose of AB 1462, was to enact business practice standards regarding preneed contracts for non-regulated third-party sellers of funeral related products that are analogous to the standards that apply to regulated funeral business entities and persons. That bill eventually died.

EXEMPTION FROM LICENSURE AND PRACTICE REQUIREMENTS ISSUES

ISSUE #19: The law exempts an individual functioning as a cemetery broker, cemetery manager or cemetery salesperson from licensure and regulation by the Bureau when he/she is an employee (direct or proprietary) of a religious corporation, church, religious society or denomination.

Question #19 for the Bureau: *Does the Bureau know of any reason why this exemption should be retained? Should the law be amended to eliminate this exemption or differentiate between direct employees of the religious corporation, church, religious society or denomination and proprietary employees?*

Background: The Cemetery Act (Business and Professions Code Sections 9600-9789) covers the licensing and regulation of cemeteries, cemetery brokers, cemetery managers, cemetery salespersons, cremated remains disposers, crematories and crematory managers. A religious corporation, church, religious society or denomination, a corporation sole administering temporalities of any church or religious society or denomination, or any cemetery organized, controlled, and operated by any of them is specifically excluded from this Act (Section 9609 of the Business and Professions Code).

The justification for this exemption is unclear.

ISSUE #20: Cemeteries, crematories, cemetery brokers, cemetery salespersons, and funeral directors are specifically exempt from the laws governing cremated remains disposers. The justification for this exemption is unclear.

Question #20 for the Bureau: *Is the Bureau aware of any reason to exempt these licensees from the registration and practice requirements?*

Background: Section 9740 of the Business and Professions Code provides that no person shall dispose of, or offer to dispose of, any cremated human remains unless registered as a cremated remains disposer by the Bureau. Any person, partnership or corporation holding a certificate of authority as a cemetery, crematory license, cemetery broker's license, cemetery salesperson's license or funeral director's license is exempt from the provisions regulating cremated remains disposers.

What follows are some of the provisions that registered cremated remains disposers are subject to:

- Section 9741(b) of the Business and Professions Code provides that every registered cremated remains disposer who dispenses human remains by air shall post a copy of his or her current pilot's license, and the address of the cremated remains storage area at his or her place of business. Every registered cremated remains disposer who dispenses human remains by boat shall post a copy of his or her current boating license and the address of the cremated remains storage area at his or her place of business.
- Section 9742 of the Business and Professions Code provides that all aircraft used for the scattering of cremated human remains shall be validly certified by the Federal Aviation Administration. All boats or vessels used for the scattering of cremated human remains shall be registered with the

Department of Motor Vehicles or documented by a federal agency, as appropriate. The certification or registration shall be available for inspection by the Bureau.

- Section 9743 of the Business and Professions Code provides, that a cremated remains disposer who scatters any cremated human remains, without specific written instructions from the person having the right to control the disposition of the remains, or who scatters any remains in a manner not in accordance with those instruction, shall be subject to disciplinary action.
- Section 9744 of the Business and Professions Code provides that each cremated remains disposer shall provide the person with the right to control the disposition of the remains, under Section 7100 of the Health and Safety Code, with a copy of the completed permit for disposition of human remains pursuant to Chapter 8 (commencing with Section 103050) of Part 1 of Division 102 of the Health and Safety Code within 30 days of the date of the scattering.
- Section 9745 of the Business and Professions Code generally requires cremated remains disposers to file, and thereafter maintain an updated copy of, an annual report on a form prescribed by the Bureau. The report shall include, but not be limited to, the names of the deceased persons whose cremated remains were disposed of, the dates of receipt of the cremated remains, the names and addresses of the persons who authorized disposal of those remains, the dates and locations of disposal of those remains, and the means and manner of disposition.

It is unclear why the registered cremated remains disposers are the only Bureau licensees subject to these consumer protection provisions.

CONSUMER AND LICENSEE OUTREACH ISSUE

ISSUE #21: Funeral establishments and cemeteries are currently required to make the Bureau's consumer guide available to consumers. Effective January 1, 2002, funeral establishments will be required to provide the guide to consumers in certain specified situations.

Question #21 for the Bureau: *Does the Bureau feel the Cemetery Act provision should be amended to mirror the provision in the Funeral and Embalmer's Act?*

Background: Sections 7685.5 and 9663 of the Business and Professions Code currently require the Bureau to make available to funeral establishments and cemetery authorities a copy of a consumer guide for funeral and cemetery purchases for purposes of reproduction and distribution. Funeral establishments and cemetery authorities are required to prominently display and make available to any individual who, in person, inquires about funeral or cemetery purchases, a copy of the consumer guide for funeral and cemetery purchases. Effective January 1, 2002, Section 7685.5 of the Business and Professions Committee will require, prior to the drafting of a contract for funeral services, the funeral establishment to provide, for retention, the consumer with a copy of the consumer guide for funeral and cemetery purchases.

BUREAU, CONSUMER AND LICENSEE USE OF THE INTERNET ISSUE

ISSUE #22: Is the Bureau utilizing Internet capabilities to improve services and provide better information to consumers and licensees?

Question #22 for the Bureau: *What has the Bureau done to enhance its Internet capabilities? What other improvements does the Bureau expect to make?*